

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

RALPH KERMIT WINTERROWD, II,

Plaintiff,

vs.

BRAD L. NELSON, et al.,

Defendants.

Case No. A02-CV-00097 (JKS)

ORDER

Ralph Kermit Winterrowd, II, sues certain officers and employees of the State of Alaska asserting claims under 42 U.S.C. § 1983. This Court has jurisdiction. 28 U.S.C. § 1343. The Court has dismissed all claims except a claim that certain Alaska State Troopers violated Winterrowd's right under the Fourth Amendment to the United States Constitution – made applicable to the states by the Fourteenth Amendment – to be free from an unreasonable seizure of his person. Specifically, Winterrowd argues that he was subjected to excessive force in connection with a traffic stop.

The Court assumes that the issues are established by Federal statutes and not by the common law, and that the issues that the parties will be researching are accurately and completely presented in the Ninth Circuit Manual of Model Jury Instructions Civil (2007). *See* Section 9, Civil Rights Actions—42 U.S.C. § 1983, at 125–197; in particular, Instruction 9.2 (Section 1983 Claim Against Defendant in Individual Capacity—Elements and Burden of Proof) at 131, and 9.22 (Particular Rights—Fourth Amendment—Unreasonable Seizure of Person—Excessive (Nondeadly) Force) at 184–86. The Court also assumes that Civil Pattern Jury Instructions on burden of proof, causation, and damages will be given. The Court notes that there is some disagreement regarding the duty

owed to Plaintiff by Defendants, but is satisfied that the jury instructions identified adequately and accurately describe that duty. It is not necessary, therefore, to look to the common law for additional guidance on the duties owed. Therefore, the issues Plaintiff presumably seeks additional time to raise in his Motion at **Docket No. 87** are moot and the motion will be **denied** on that basis.

**IT IS SO ORDERED.**

Dated at Anchorage, Alaska, this 28th day of August 2007.

\_\_\_\_\_/s/ James K. Singleton, Jr.

**JAMES K. SINGLETON, JR.**  
United States District Judge

ORDER

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